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 ALLERGAN USA, INC. and  
 ALLERGAN INDUSTRIE, SAS

UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA

ALLERGAN USA, INC. and  
 ALLERGAN INDUSTRIE, SAS,

Plaintiffs,

v.

MEDICIS AESTHETICS, INC.,  
 MEDICIS PHARMACEUTICAL CORP.,  
 VALEANT PHARMACEUTICALS  
 NORTH AMERICA LLC,  
 VALEANT PHARMACEUTICALS  
 INTERNATIONAL, VALEANT  
 PHARMACEUTICALS  
 INTERNATIONAL, INC., AND  
 GALDERMA LABORATORIES, L.P.

Defendants.

Case No. SACV13-01436 AG (JPRx)

**PLAINTIFFS' STATEMENT OF  
 UNCONTROVERTED FACTS AND  
 CONCLUSIONS OF LAW**

Judge: Hon. Andrew J. Guilford  
 Hearing: May 18, 2015 at 10:00 a.m.  
 Ctrm: 10D

Discovery cutoff date: May 15, 2015  
 Pretrial conference date: July 20, 2015

**Trial date: August 4, 2015**

Pursuant to Civil L.R. 56-1, Plaintiffs Allergan USA, Inc. and Allergan Industrie, SAS, submit this Statement of Uncontroverted Facts and Conclusions of Law in Support of their Motion for Partial Summary Judgment of No Invalidity from Prior Public Use:

### **Uncontroverted Material Facts**

1. Defendants' opening expert report from Dr. Prestwich does not cite any supporting documents that demonstrate doctors were pre-mixing any HA-BDDE filler (e.g., Restylane and Juvederm Ultra) and lidocaine before Allergan's August 2008 filing date. (Countryman Decl., Ex. 4 at ¶¶ 145, 227-230, 235-237, 182-186, Ex. D at 46-51, Ex. E at 11-12, Ex. F at 8-10)

2. Defendants' rebuttal expert report from Dr. Nestor does not cite any patient records or supporting documents that establish that he pre-mixed any HA-BDDE filler (e.g., Restylane and Juvederm Ultra) and lidocaine before Allergan's August 2008 filing date. (Countryman Decl., Ex. 8 at ¶¶ 45-46 & n.29.)

3. Defendants have not identified any patient records or other supporting documents that establish the alleged prior use described in the Internet article cited at footnote 29 of Dr. Nestor's report (and attached as Exhibit 9 to this motion). (See, e.g., Ex. 6. (no mention of such corroboration in the invalidity contentions).)

4. Defendants' invalidity contentions do not mention Dr. Nestor, the Internet article cited at footnote 29 of Dr. Nestor's report, and do not identify any other evidence establishing that any doctor pre-mixed any HA-BDDE filler (e.g., Restylane and Juvederm Ultra) and lidocaine before Allergan's August 2008 filing date. (See Ex. 6.)

### **Conclusions of Law**

1. Defendants have not provided legally sufficient corroboration that any doctor pre-mixed any HA-BDDE filler and lidocaine before Allergan's August 2008 filing date.

1           2.       Without the required corroboration, all Defendants' anticipation and  
2 obviousness allegations based on the allegation that doctors pre-mixed any HA-  
3 BDDE filler and lidocaine before Allergan's August 2008 filing date fail as a matter  
4 of law.  
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8 Dated: March 25, 2015

FISH & RICHARDSON P.C.

9  
10 By: /s/ Craig E. Countryman  
11 Craig E. Countryman  
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13 Attorneys for Plaintiffs  
14 ALLERGAN USA, INC. AND  
15 ALLERGAN INDUSTRIE, SAS  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on March 25, 2014 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Civil Local Rule 5.4. Any other counsel of record will be served by electronic mail, facsimile and/or overnight delivery.

/s/ Craig E. Countryman

Craig E. Countryman